TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1950

No. 81

THE UNITED STATES OF AMERICA,
APPELLANT,

vs.

MRS. MARIA MELITONA SANCHEZ and
ARMAND MOTA

APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS

FILED MAY 24, 1950

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1950

No. 81

THE UNITED STATES OF AMERICA,
APPELLANT,

vs.

MRS. MARIA MELITONA SANCHEZ and ARMAND MOTA

APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS

INDEX

	Original	Print
Record from U. S. D. C., Northern District of Illinois	1	1
Caption [omitted in printing]	1	1
Complaint	3	1
Answer of defendant, Maria Melitona Sanchez	5	2
Answer of defendant, Armand Mota	7	2
Order dismissing complaint	9	3
Transcript of proceedings had on March 28, 1950	11	4
Petition for appeal	18	7
Assignment of errors	21	7
Order allowing appeal	32	8
Praecipe for transcript of record	36	9
Citation and marshal's return [omitted in printing]	39	10
Docket entries	40	10
Clerk's certificate [omitted in printing]	42	12
Statement of points to be relied upon and designation of record for printing	43	12
Order noting probable jurisdiction	45	12

1 (Caption omitted)

3 In the United States District Court
For the Northern District of Illinois
Eastern Division
No. 49 C 298

UNITED STATES OF AMERICA, PLAINTIFF,
v.
MRS. MARIA MELITONA SANCHEZ and ARMAND MOTA,
DEFENDANTS.

Complaint—Filed February 21, 1949

NOW COMES the United States of America by Otto Kerner, Jr., United States Attorney for the Northern District of Illinois and for claim against the above-named defendants, and each of them, alleges as follows:

I.

This action has been authorized by the Commissioner of Internal Revenue and is being brought under the direction of the Attorney General of the United States.

II.

The defendants reside in the City of Chicago, County of Cook and State of Illinois.

III.

During all times hereinafter mentioned the plaintiff has been and now is a corporation sovereign and body politic.

IV.

On February 27, 1943, said Commissioner assessed the amount of $8,701.65 upon transfers of marihuana made by the above-named defendants on the 13th, 14th and 16th days of January, 1943. No part of said assessment has been paid.

WHEREFORE, the plaintiff demands judgment against the defendants, and each of them, for the amount of $8,701.65, together with interest thereon from February 27, 1943, at the rate of 6% per annum until paid.

OTTO KERNER, JR.
United States Attorney
LEROY R. KREIN
Assistant United States Attorney.

5 In the United States District Court

(Title Omitted)

Answer of Maria Melitona Sanchez—Filed March 14, 1949

The defendant, Maria Melitona Sanchez, answers the complaint as follows:

Neither admits nor denies the allegations as contained in paragraph one of said complaint, as defendant herein has no personal knowledge of same.

Admits the allegations as set forth in paragraphs two and three of said complaint.

Neither admits nor denies that on February 27, 1943, the Commissioner of Internal Revenue assessed the amount of $8,701.65 upon alleged transfers of marihuana allegedly made by defendant herein on the 13th, 14th and 16th days of January, 1943, as alleged in paragraph four of said complaint, and further that if said assessment was made that said assessment is unlawful and unjust, and wrongfully made.

That defendant herein is not indebted to nor does she owe the said Commissioner of Internal Revenue the amount of $8,701.65, or any sum whatsoever.

That for further defense, the defendant herein alleges that the cause of action stated in the complaint for said sum of $8,701.65 did not accrue to the plaintiff within the statutory period allowed for same and that, therefore, said action is barred by the Statute of Limitations.

WHEREFORE, the defendant, not being indebted to the plaintiff in the sum of $8,701.65 or any sum whatsoever, respectfully requests that said cause of action be dismissed, and without costs.

MARIA M. SANCHEZ
Defendant

7 In the United States District Court

(Title Omitted)

Answer of Armand Mota—Filed March 14, 1949

The defendant, Armand Mota, answers the complaint as follows:

Neither admits nor denies the allegations as contained in paragraph one of said complaint, as defendant herein has no personal knowledge of same.

Admits the allegations as set forth in paragraphs two and three of said complaint.

Neither admits nor denies that on February 27, 1943, the Commissioner of Internal Revenue assessed the amount of $8,701.65 upon alleged transfers of marihuana allegedly made by defendant herein on the 13th, 14th and 16th days of January, 1943, as alleged in paragraph four of said complaint, and further that if said assessment was made that said assessment is unlawful and unjust, and wrongfully made.

Denies that he is indebted to the plaintiff upon the alleged assessment made upon him by the Commissioner of Internal Revenue in the sum of $8,701.65, or any sum whatsoever.

That for further defense, the defendant herein alleges that the cause of action stated in the complaint for said sum of $8,701.65 did not accrue to the plaintiff within the statutory period allowed for same and that, therefore, said action is barred by the Statute of Limitations.

WHEREFORE, the defendant respectfully requests that said cause be dismissed, and without costs.

ARMAND MOTA
Defendant

9 3-28-50 BARNES, J.

In the United States District Court
For the Northern District of Illinois
Eastern Division

UNITED STATES OF AMERICA,
vs.
MRS. MARIA MELITONA SANCHEZ and ARMAND MOTA.
No. 49 C 298.

Order Dismissing Complaint
March 28, 1950

This cause this day being called for trial come the parties to this suit by their attorneys, respectively, whereupon, the defendants by counsel enter their motion to dismiss the complaint and the Court being fully advised in the premises said motion is granted and it is

ORDERED that the complaint be and it is hereby dismissed.

11 In the United States District Court
Northern District of Illinois
Eastern Division

UNITED STATES OF AMERICA, PLAINTIFF,
vs.
MRS. MARIA MELITONA SANCHEZ and ARMAND MOTA,
DEFENDANTS.

No. 49 C. 298.

Transcript of Proceedings—Filed April 25, 1950

had in the above-entitled cause before the Honorable John P. Barnes, one of the Judges of said Court, in his court room in the United States Court House at Chicago, Illinois, on March 28, 1950, beginning at 10:00 o'clock a. m.

PRESENT:

HON. OTTO KERNER, JR., United States District Attorney, represented by JOHN A. LOOBY, JR., ESQ., Assistant United States Attorney, and JAMES P. GARLAND, ESQ., of the Department of Justice, Washington, D. C., on behalf of plaintiff;

SAMUEL H. BLOCK, ESQ., (10 N. Clark St., Chicago 2, Ill.), on behalf of defendants.

And thereupon the following proceedings were had herein:

By the CLERK: No. 49 C. 298. United States of America v. Mrs. Maria Melitona Sanchez and Armand Mota, defendants.

By Mr. LOOBY: The Government is ready, if your Honor please.

12 Your Honor, may I present James P. Garland, of the Department of Justice, who will handle the prosecution.

By Mr. BLOCK: Your Honor, we are ready, but I have deposition to take, and I would like to have this set for two o'clock, if we could change it. I don't know a thing about this.

By the COURT: What kind of a case is it?

By Mr. GARLAND: A tax case, your Honor, a civil case.

By the COURT: How long will it take?

By Mr. BLOCK: Oh, I don't think more than a half an hour.

By Mr. GARLAND: I don't think it will take more than half an hour or an hour.

By the COURT: Two o'clock.

By Mr. GARLAND: Yes, thank you, your Honor.

By the COURT: Very well.

(Whereupon the further hearing of the above-entitled cause was continued until 2:00 o'clock p. m. of the same day, March 28, 1950.)

* * * * *

And thereupon the following further proceedings were had herein:

By the CLERK: No. 49 C. 298. United State of America v. Mrs. Maria Melitona Sanchez and Armand Mota.

By the COURT: Proceed.

13 By Mr. GARLAND: May it please the Court, this case involves a tax on marihuana.

Your Honor had the case of Tovar, I think you may recall, in which the Circuit Court for the Seventh Circuit held that the tax of $100 an ounce was a penalty and not a tax. I call that to the court's attention now.

However, we would like in this case, with the court's permission, to make a *prima facie* case by putting in the assessment list, and the other material we have here, which will take but a few minutes, so that in the event of an ultimate disposition of this case in favor of the Government—that is, on the assumption that your Honor will doubtless follow the Circuit Court of Appeals decision to the effect that this tax is a penalty, and unconstitutional, so that in the event this case does go to the Circuit Court—this case here that is before your Honor now, the Government will have a *prima facie* case, and it will not be sent back if the Government should prevail there.

I have talked to counsel about it.

By the COURT: Why didn't you take the other one up?

By Mr. GARLAND: Well, we did not like the record in that case. There was a purported unlawful search and seizure. Now, that was the reason why we did not petition for certiorari there.

Now, it is a very important question, as your Honor well knows.

14 By the COURT: Oh, well, I didn't like the way you handled it, important or unimportant.

By Mr. GARLAND: I just called that court's decision to your Honor's attention.

There is no motion filed here by counsel for the defendants to dismiss.

In view of that we would like, despite this decision of the Seventh Circuit, as I say, merely to put in the assessment list.

By the COURT: I don't like it. You were very anxious to maintain that assessment, which was unjust.

By Mr. GARLAND: My personal opinion is that we should have filed a petition for certiorari, but unfortunately I am not the one to decide that.

I am just trying to explain why, as I understand it, there was no petition for certiorari filed in that case.

By Mr. BLOCK: I would like to make a motion at this time, to dismiss.

By the COURT: On what ground?

By Mr. BLOCK: In view of the decision of the Court in the case of Tovar v. Jarecki, your Honor.

By the COURT: Why shouldn't it be granted?

By Mr. GARLAND: As I say, with the court's permission, I think it is within the court's discretion to permit us to make a *prima facie* showing.

15 By the COURT: You folks never do anything that I want you to do. I don't know whether I should do anything that you want me to do, if it is a mere favor to you. If it is a right you ask for it and I will grant it.

By Mr. GARLAND: I cannot say that it is a right, your Honor.

By the COURT: You are insisting on dragging a poor woman up to the Circuit Court of Appeals.

That was an outrageous case, and you know it if you have looked into the record.

By Mr. GARLAND: Yes.

By the COURT: You know it was an outrageous case, and this may be another one like it.

By Mr. BLOCK: Just exactly the same, your Honor, in my opinion.

By Mr. GARLAND: Of course this case doesn't have the question in it as to whether or not the evidence was obtained unlawfully.

By the COURT: What is your motion?

By Mr. BLOCK: Motion to dismiss, your Honor.

By the COURT: Do you know of any reason why it should not be granted?

By Mr. GARLAND: We are not going to try to distinguish this case.

By the COURT: Do you know of any reason why that motion should not be granted?

By Mr. GARLAND: No, your Honor.

By the COURT: Let it be granted.

By Mr. BLOCK: Thank you, your Honor.

(Which were all of the proceedings had upon the hearing of the above-entitled cause.)

16 Reporter's Certificate to foregoing transcript omitted in printing.

18 In the Supreme Court of the United States

October Term, 1949

(Title Omitted)

Petition for Appeal—Filed April 28, 1950

The United States of America, plaintiff-appellant in the above-entitled cause, considering itself aggrieved by the final judgment of the United States District Court for the Northern District of Illinois, entered on the twenty-eighth day of March, 1950, does hereby pray an appeal from said final judgment to the Supreme Court of the United States. Pursuant to Rule 12 of the Rules of the Supreme Court, the United States presents to this Court herewith a statement showing the basis of jurisdiction of the Supreme Court to entertain an appeal in this cause.

The particulars wherein the plaintiff-appellant considers the judgment erroneous are set forth in the assignment of errors and prayer for reversal accompanying this petition and to which reference is hereby made.

Plaintiff-appellant prays that this appeal may be allowed and that citation be issued as provided by law, and that a transcript of the record, proceedings, and documents

19 upon which said final judgment was based, duly authenticated, be sent to the Supreme Court of the United States under the rules of said Court in such cases made and provided.

PHILIP B. PERLMAN
Philip B. Perlman,
Solicitor General.

Dated this 27th day of April, 1950.

21 In the Supreme Court of the United States

October Term, 1949

(Title Omitted)

Assignment of Errors—Filed April 28, 1950

The United States of America, plaintiff-appellant, in the above-entitled cause, in connection with its petition for appeal to the Supreme Court of the United States, hereby assigns error to the record and proceedings and the entry of

the final decree in the United States District Court for the Northern District of Illinois on March 28, 1950, in the above-entitled cause, and says that in the entry of the final decree the District Court committed error to the prejudice of the plaintiff in the following particulars:

1. The court erred in granting judgment for the defendants.

2. The court erred in failing and refusing to hold valid and constitutional the provisions of Section 2590 (a) (2) of the Internal Revenue Code (26 U. S. C. 1946 ed., Sec. 2590) imposing a tax of $100 an ounce of marihuana upon the transfer thereof to persons who have not paid the special tax and registered under Sections 3230 and 3231 of the Internal Revenue Code (26 U. S. C. 1946 ed., Secs. 3230 and 3231).

22 3. The court erred in holding that the tax imposed by Section 2590 (a) (2) of the Internal Revenue Code upon transfers of marihuana to persons who have not paid the special tax and registered under Sections 3230 and 3231 of the Internal Revenue Code is unconstitutional.

PHILIP B. PERLMAN
Philip B. Perlman,
Solicitor General.

Dated this 27th day of April, 1950.

32 Supreme Court of the United States

No. ....., October Term, 1949.

(Title Omitted)

Order Allowing Appeal—Filed April 28, 1950

UPON CONSIDERATION of the application of the appellant herein for the allowance of an appeal from the judgment entered herein by the United States District Court for the Northern District of Illinois on March 28, 1950, and it appearing that the appellant has filed a petition for appeal, assignments of error and jurisdictional statement, as required by the rules of this Court,

IT IS ORDERED that an appeal be, and the same hereby is, allowed, and it is further ordered that the Clerk of the District Court certify and send to this Court a certified transcript of the record within forty days from the date hereof.

HERMAN MINTON
Associate Justice of the Supreme Court of the United States.

Dated this 27th day of April, 1950.

(File Endorsement Omitted)

36 In the United States District Court
(Title Omitted)

Praecipe for Transcript of Record—Filed April 28, 1950

To: The Clerk of the United States District Court for the Northern District of Illinois Eastern Division

Plaintiff, United States of America, hereby requests you to make a transcript of record to be filed in the Supreme Court of the United States pursuant to an appeal allowed in the above-entitled cause on its behalf and to include in such transcript of record the following:

1. Docket entries.
2. Complaint.
3. Answer of Maria Melitona Sanchez.
4. Answer of Armand Mota.
5. Order dismissing complaint.
6. Transcript of proceedings before District Court on March 28, 1950.
7. Final judgment dismissing complaint.
8. Petition for appeal, dated April 27, 1950.
9. Assignment of errors, dated April 27, 1950.

37 10. Statement as to jurisdiction of the United States, dated April 27, 1950.

11. Order allowing appeal to the Supreme Court, dated April 27, 1950.
12. Citation on appeal, dated April 27, 1950.
13. Notice calling attention to the provisions of Supreme Court Rule 12(3), dated April 27, 1950.
14. Proof of service of appeal papers.
15. Certificates of service of appeal papers.
16. This praecipe.
17. Proof of service of this praecipe.
18. Certificate of service of this praecipe.
19. Clerk's certificate.

Said transcript is to be prepared as required by law and the rules of the Supreme Court of the United States, and is to be filed in the office of the Clerk of the Supreme Court.

OTTO KERNER, JR.
Otto Kerner, Jr.,
United States Attorney.

Dated April 27, 1950.

United States of America ss:

39 Citation in usual form showing service on Maria Melitona Sanchez and Armand Mota, filed May 4, 1950, omitted in printing.

40 *The Following Are the Docket Entries to and Including May 4, 1950.*

D. C. Form No. 106 A

Judge Barnes Calendar

49C 298 Docket 49C 298

Title of Case	Attorneys
United States of America, *Plaintiff*, vs. (D) Mrs. Maria Melitona Sanchez and Armand Mota, *Defendants*.	*For Plaintiff:* Otto Kerner, Jr., U. S. Atty. *For Defendant:* Samuel H. Block 10 N. Clark St. FRanklin 2-4897

Basis of action: Suit to recover judgment of $8,701.65 and interest, representing assessment made upon transfers of marihuana made by Defts. in 1943.

Jury trial claimed by

41 49C 298

Date	Filings-Proceedings	Clerk's Fees Plaintiff	Clerk's Fees Defendant
2-21-49	Filed complaint and (2) copies (2) (JS-5)	15.00	
2-21-49	Issued summons and (2) copies with copies of complaint g		
3-1-49	Filed summons returned served. 2 serv. $4.48 jb		
3-8-49	On motion pltff. order cause placed on passed case calendar.—Barnes, J. Mld. notice to attys. 3-10-49 Z		
3-14-49	Filed Appearance of Maria Melitona Sanchez & Armand Mota as defts. & Samuel H. Block as attys.		
" " "	Filed *Answer* of Maria Melitona Sanchez. (2)		
" " "	Filed *Answer* of Armand Mota. (2) Z		
4-12-49	On mo. Govt. Ord. cs. placed on passed case cal.—Barnes, J. Mld. note. to attys., 4-18-49. r		

5-10-49	On motion of pltf. order cause placed on passed case calendar—Barnes, J.		
	Mld notice to attys 5-17-49	P	
6-14-49	On motion of pltff. order cause set for trial on Oct. 26, 1949—Barnes, J.		
	Mld. notice to attys. 6-21-49	Z	
10-26-49	On motion of pltf. ord. cs. cont'd. for tr. to 12-5-49—Barnes, J.		
	Mld. notice to attys 10-27-49	P	
12-22-49	On mo. Govt. ord. cs. cont. for tr. to Jan. 24, 1950—Barnes, J.		
	Mld. notice to attys. 12-30-49	jb	
3-28-50	Cause called for tr. Order defts' mo. to dism. complt. granted and said complt. dismd.—Barnes, J. (JS6)		
	Mld. notice to attys. 3-29-50	jb	
3-30-50	Filed Witness Subpoena of Paul D. Newey retd served. $.50.		
" " "	Filed Witness Card of Paul D. Newey—1 day—12 mi.— pd. $4.84. r		
4-26-50	Issued C. C. of Docket Entries and Order of Dismissal of March 28, 1950 to U. S. Attorney.		1.20 US
4-25-50	Filed Transcript of proceedings of hearing held Mar. 28, 1950 (9) k.		
4-28-50	Filed Petition for Appeal. (2)		5.00 US
4-27-50	Order allowing Appeal and Clerk to certify Transcript of record within 40 days from date hereof to the Supreme Court of the United States—DRAFT—Sherman Minton, Associate Justice of U. S. S. C. (Orig. order from U. S. S. C.) (1)		
	~~Mld. notice to attys. 4-28-50~~		
4-28-50	Filed Statement as to Jurisdiction. (3)		
" " "	Filed Statement calling attention to the Provisions of Supreme Court Rule 12 (3) (1)		
" " "	Filed Assignment of Errors. (2)		
" " "	Filed Praecipe. (2)	P	
5-4-50	Filed Citation ret'd. served. 2 services $4.60		

42 Clerk's Certificate to foregoing transcript omitted in printing.

43 In the Supreme Court of the United States

Statement of Points to be Relied Upon and Designation of Parts of the Record Necessary for Consideration Thereof—Filed June 12, 1950

Now comes the Appellant in the above cause and for its statement of points upon which it intends to rely on its appeal in this Court adopts the points contained in its Assignment of Errors heretofore filed herein.

2. The entire record in this cause as filed in this Court pursuant to the Appellant's praecipe to the Clerk of the United States District Court for the Northern Disrict of Illinois is necessary for the consideration of the foregoing points and Appellant designates said entire record for printing by the Clerk of this Court.

PHILIP B. PERLMAN

Philip B. Perlman,
Solicitor General.

Dated June 12, 1950.

44 I hereby certify that I have this day served a copy of the foregoing Statement of Points to be Relied Upon and Designation of Parts of the Record Necessary for Consideration Thereof on counsel for the Appellees by mailing a copy to Samuel H. Block, 10 N. Clark Street, Chicago 2, Illinois, counsel for the Appellees.

PHILIP B. PERLMAN

Philip B. Perlman,
Solicitor General.

(File Endorsement Omitted June 12, 1950.)

45 Supreme Court of the United States

No. 81, October Term, 1950

Order Noting Probable Jurisdiction—June 5, 1950

The statement of jurisdiction in this case having been submitted and considered by the Court, probable jurisdiction is noted.

U. S. GOVERNMENT PRINTING OFFICE 862124 NO. 42 1950

LIBRARY
SUPREME COURT, U. S.

Office-Supreme Court, U. S.
FILED
MAY 20 1950
CHARLES ELMORE CROPLEY
CLERK

No. 81

In the Supreme Court of the United States

OCTOBER TERM, 1950

THE UNITED STATES OF AMERICA, APPELLANT

v.

[illegible] MEDINDEZ SANCHEZ AND ARMAND MORA, APPELLEES

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ILLINOIS

STATEMENT AS TO JURISDICTION

In the Supreme Court of the United States

OCTOBER TERM, 1949

THE UNITED STATES OF AMERICA, APPELLANT

v.

MRS. MARIA MELITONA SANCHEZ AND ARMAND MOTA, APPELLEES

STATEMENT AS TO JURISDICTION

In compliance with Rule 12 of the Rules of the Supreme Court of the United States, as amended, the United States, plaintiff-appellant, submits herewith its statement particularly disclosing the basis upon which the Supreme Court has jurisdiction to review on direct appeal the judgment of the District Court entered in this cause.

OPINION BELOW

The District Court for the Northern District Illinois rendered no opinion on granting the judgment appealed from. A transcript of the proceedings at the trial preceding entry of the judgment, and showing that the judgment rested entirely and solely on constitutional grounds, is contained in the Appendix.

JURISDICTION

The judgment of the District Court was entered on March 28, 1950. The petition for appeal was presented to Mr. Justice Minton on April 27, 1950, and was allowed on that date. The juris-

diction of the Supreme Court to review this decision by direct appeal is conferred by 28 U. S. C., Sec. 1252. The jurisdiction of the Supreme Court to review this judgment on direct appeal is sustained by *United States* v. *Rompel*, 326 U. S. 367.

QUESTION PRESENTED

Whether the tax imposed upon the transfer of marihuana under Section 2590 (a) (2) of the Internal Revenue Code is unconditional.

STATUTE INVOLVED

Internal Revenue Code:

> SEC. 2590. TAX.
>
> (a) *Rate.*—There shall be levied, collected, and paid upon all transfers of marihuana which are required by section 2591 to be carried out in pursuance of written order forms taxes at the following rates:
>
> (1) *Transfers to special taxpayers.*—Upon each transfer to any person who has paid the special tax and registered under sections 3230 and 3231, $1 per ounce of marihuana or fraction thereof.
>
> (2) *Transfers to others.*—Upon each transfer to any person who has not paid the special tax and registered under sections 3230 and 3231, $100 per ounce of marihuana or fraction thereof.
>
> (b) *By Whom Paid.*—Such tax shall be paid by the transferee at the time of securing each order form and shall be in addition to the price of such form. Such transferee shall be liable for the tax imposed by this section but in the event that

the transfer is made in violation of section 2591 without an order form and without payment of the transfer tax imposed by this section, the transferor shall also be liable for such tax.

* * * * *

[26 U. S. C. 1946 ed., Sec. 2590.]

SEC. 2591. ORDER FORMS.

(a) *General Requirement.*—It shall be unlawful for any person, whether or not required to pay a special tax and register under sections 3230 and 3231, to transfer marihuana, except in pursuance of a written order of the person to whom such marihuana is transferred, on a form to be issued in blank for that purpose by the Secretary.

* * * * *

[26 U. S. C. 1946 ed., Sec. 2591.]

SEC. 2593. UNLAWFUL POSSESSION.

(a) *Persons in General.*—It shall be unlawful for any person who is a transferee required to pay the transfer tax imposed by section 2590 (a) to acquire or otherwise obtain any marihuana without having paid such tax; and proof that any person shall have had in his possession any marihuana and shall have failed, after reasonable notice and demand by the collector, to produce the order form required by section 2591 to be retained by him, shall be presumptive evidence of guilt under this section and of liability for the tax imposed by section 2590 (a).

* * * * *

[26 U. S. C. 1946 ed., Sec. 2593.]

STATEMENT

This suit was brought by the United States in the United States District Court for the Northern District of Illinois for the recovery of $8,701.65 alleged to have been duly assessed against the defendants on February 27, 1943.

The defendants' answer denied that the assessment was lawfully made and alleged that they were not indebted to the United States. For a further defense it was alleged that the cause of action stated in the complaint was barred by the statute of limitations.

The case came on for trial on March 28, 1950, and at the opening of the trial the defendants moved to dismiss. This motion was predicated upon the sole ground that Section 2590 (a) (2) of the Internal Revenue Code, *supra*, under which the tax was assessed, was unconstitutional, and in support thereof defendants relied on *Tovar* v. *Jarecki*, 173 F. 2d 449 (C. A. 7). The District Court granted the motion of dismissal, and a minute order was entered sustaining the motion and granting judgment to the defendants.

THE QUESTION IS SUBSTANTIAL

In *Tovar* v. *Jarecki*, *supra*, the Court of Appeals for the Seventh Circuit held that the tax imposed by Section 2590 (a) (2) of the Internal Revenue Code, *supra*, was a penalty similar to that struck down in *Lipke* v. *Lederer*, 259 U. S. 557, which involved the taxing provisions of the National Prohibition Act, c. 85, 41 Stat. 305. The latter Act prohibited the sale of intoxicating

beverages and, in addition to the ordinary criminal penalties for its violation, provided that, upon evidence of illegal manufacture or sale, there could be assessed and collected from the guilty person a tax in double the amount provided in the case of legal manufacture. This Court held that the exaction involved in the *Lipke* case was clearly a penalty and not a tax, and that the imposition of such a penalty without trial violated the due process clause.

The tax here involved, which is imposed upon the transfer of marihuana by Section 2590 (a) (2) of the Internal Revenue Code, is clearly an excise tax. There is no criminal liability attaching to the transfer of marihuana. The statute simply provides a tax, in the case of a transfer to a licensed person, of one dollar per ounce and, in the case of a transfer to an unlicensed person, one hundred dollars per ounce. Section 2593 of the Internal Revenue Code, *supra*, imposes criminal penalties for failure to pay the tax, but it is the failure to pay the tax that gives rise to the criminal liability; and not, as in *Lipke* v. *Lederer*, *supra*, the criminal liability which creates the tax obligation.

In the *Tovar* case, the Court of Appeals for the Seventh Circuit placed heavy reliance on the fact that, if the taxpayer had been a licensed transferee under the statute, the tax upon a transfer to him would have only been one dollar an ounce but, as an unlicensed transferee, he was assessed one hundred dollars an ounce. From

this disparity in rates the Court of Appeals concluded that the statute was not a revenue raising measure but one designed to create a deterrent upon the activity taxed.

This Court has not regarded such disparity in the tax rate as constituting a basis for invalidation of the tax. In *McCray* v. *United States*, 195 U. S. 27, 61, the Court upheld a tax upon colored oleomargarine which was forty times the amount of the tax on uncolored oleomargarine, and pointed out that even though the effect of the tax was to repress the manufacture of colored oleomargarine, it was not within the power of the Court to dictate to Congress how the conceded power to tax should be exercised.

A similar assault upon Section 2 of the National Fire Arms Act of June 26, 1934, c. 757, 48 Stat. 1236 (26 U. S. C. 1946 ed., Sec. 1132), which imposes a two hundred dollar annual license tax upon dealers in certain types of fire arms, was rejected in *Sonzinsky* v. *United States*, 300 U. S. 506. In upholding that tax, the Court said (p. 513):

> Every tax is in some measure regulatory. To some extent it interposes an economic impediment to the activity taxed as compared with others not taxed. But a tax is not any the less a tax because it has a regulatory effect, *United States* v. *Doremus*, *supra*, 93, 94; *Nigro* v. *United States*, 276 U. S. 332, 353, 354; *License Tax Cases*, *supra*; see *Child Labor Tax Case*, *supra*, 38; and it has long been established that

an Act of Congress which on its face purports to be an exercise of the taxing power is not any the less so because the tax is burdensome or tends to restrict or suppress the thing taxed. *Veazie Bank* v. *Fenno*, 8 Wall. 533, 548; *McCray* v. *United States*, 195 U. S. 27, 60–61; cf. *Alaska Fish Co.* v. *Smith*, 255 U. S. 44, 48.

Inquiry into the hidden motives which may move Congress to exercise a power constitutionally conferred upon it is beyond the competency of courts. *Veazie Bank* v. *Fenno*, *supra*; *McCray* v. *United States*, *supra*, 56–59; *United States* v. *Doremus*, *supra*, 93–94; see *Magnano Co.* v. *Hamilton*, 292 U. S. 40, 44, 45; cf. *Arizona* v. *California*, 283 U. S. 423, 455; *Smith* v. *Kansas City Title Co.*, 255 U. S. 180, 210; *Weber* v. *Freed*, 239 U. S. 325, 329–330; *Fletcher* v. *Peck*, 6 Cranch. 87, 130. They will not undertake, by collateral inquiry as to the measure of the regulatory effect of a tax, to ascribe to Congress an attempt, under the guise of taxation, to exercise another power denied by the Federal Constitution. *McCray* v. *United States*, *supra*; cf. *Magnano Co.* v. *Hamilton*, *supra*, 45.

Here the annual tax of $200 is productive of some revenue. We are not free to speculate as to the motives which moved Congress to impose it, or as to the extent to which it may operate to restrict the activities taxed. As it is not attended by an offensive regulation, and since it operates as a tax, it is within the national

taxing power. *Alston* v. *United States*, 274 U. S. 289, 294; *Nigro* v. *United States*, *supra*, 352, 353; *Hampton & Co.* v. *United States*, 276 U. S. 394, 411, 413.

In *Nigro* v. *United States*, 276 U. S. 332, the Court upheld the Anti-Narcotic Act (c. 1, 38 Stat. 785, as amended by Section 1006 of the Revenue Act of 1918, c. 18, 40 Stat. 1057, 1130), which was similar to the statute here involved in regulating the transfer of narcotics except that it does not contain any provision for tax upon transfers to unauthorized persons.

The effect of the ruling below, if allowed to stand, is to remove all criminal sanctions upon the possession or transfer of untaxed marihuana. The only crime defined by federal law with respect to marihuana is the possession or transfer of untaxed marihuana. If the tax imposed is a penalty, then the crime of possessing non-tax-paid marihuana no longer exists.

The decision of the district court in this case, and that of the Court of Appeals in the *Tovar* case, are in conflict with *United States* v. *Doremus*, 249 U. S. 86; *McCray* v. *United States*, *supra*; *Nigro* v. *United States*, *supra*; *Sonzinsky* v. *United States*, *supra*.

The question presented by this appeal is a substantial one and of public importance.

Respectfully submitted.

PHILIP B. PERLMAN,
Solicitor General.

APRIL 27, 1950.

U. S. GOVERNMENT PRINTING OFFICE 1950

LIBRARY
SUPREME COURT, U. S.

FILED
SEP 25 1950
CHARLES ELMORE CROPLEY
CLERK

No. 31

In the Supreme Court of the United States

OCTOBER TERM, 1950

THE UNITED STATES OF AMERICA, APPELLANT

v.

MRS. MARIA MELITONA SANCHEZ AND ARMAND MOTA

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ILLINOIS

BRIEF FOR THE UNITED STATES

INDEX

	Page
Opinion below	1
Jurisdiction	1
Question presented	2
Statute involved	2
Statement	2
Specification of errors to be urged	3
Summary of argument	3
Argument—Section 2590 (a)(2) of the Internal Revenue Code is constitutional	5
1. The statute	5
2. The grounds for the decision below	8
3. The controlling principles established by decisions of this Court	10
Conclusion	31
Appendix	33

CITATIONS

Cases:

Alaska Fish Co. v. *Smith*, 255 U. S. 44	17, 19, 22
Alexander Theater Ticket Office v. *United States*, 23 F. 2d 44	19
Alston v. *United States*, 274 U. S. 289	18
Apollo Operating Corp. v. *Anderson*, 55 F. 2d 66	20
Austin v. *The Aldermen*, 7 Wall. 694	12
Billings v. *United States*, 232 U. S. 261	18
Brushaber v. *Union Pacific R. R.*, 240 U. S. 1	11, 16
Carter v. *Carter Coal Co.*, 298 U. S. 238	23
Child Labor Tax Case, 259 U. S. 20	4, 23
Crocker v. *Malley*, 249 U. S. 223	19
Fernandez v. *Wiener*, 326 U. S. 340	4, 20
Flint v. *Stone Tracy Co.*, 220 U. S. 107	12
Hampton & Co. v. *United States*, 276 U. S. 394	18
Helvering v. *Mitchell*, 303 U. S. 391	23, 26, 29
Helvering v. *Nat. Grocery Co.*, 304 U. S. 282	23, 27
Hill v. *Wallace*, 259 U. S. 44	24
Knowlton v. *Moore*, 178 U. S. 41	12
Kollock, Petitioner, In re, 165 U. S. 526	17
License Tax Cases, 5 Wall. 462	12
Lipke v. *Lederer*, 259 U. S. 557	5, 25
McCray v. *United States*, 195 U. S. 27	13, 15, 17
McKenna v. *Anderson*, 31 F. 2d 1016	19
Magnano Co. v. *Hamilton*, 292 U. S. 40	16, 21
Nigro v. *United States*, 276 U. S. 332	17, 23, 25, 28, 29, 31
Pacific Fisheries v. *Alaska*, 269 U. S. 269	13
Pacific Ins. Co. v. *Soule*, 7 Wall. 433	11
Patton v. *Brady, Executrix*, 184 U. S. 608	12
Regal Drug Co. v. *Wardell*, 260 U. S. 386	25
Sonzinsky v. *United States*, 300 U. S. 506	4, 14, 24, 31

Cases—Continued

	Page
Spencer v. *Merchant*, 125 U. S. 345	12
Steward Machine Co. v. *Davis*, 301 U. S. 548	22
Tovar v. *Jarecki*, 173 F. 2d 449	2, 8, 9, 10
Treat v. *White*, 181 U. S. 264	12
United States v. *Butler*, 297 U. S. 1	4
United States v. *Constantine*, 296 U. S. 287	5, 25, 30
United States v. *Doremus*, 249 U. S. 86	17, 24
United States v. *LaFranca*, 282 U. S. 568	25
Veazie Bank v. *Fenno*, 8 Wall. 533	12

Constitution and Statutes:

Constitution of the United States:	
Art. I, Sec. 8, cl. 1	11
Art. I, Sec. 9	11
Federal Anti-Narcotic Act, 38 Stat. 785	17, 18
Internal Revenue Code, 53 Stat., Part I, 26 U.S.C. 1946 ed., Secs. 2590, 2591, 2593, 2596, 3230, 3231, 3234, 3235:	
Sec. 2590	2, 5, 6, 8, 25, 27, 28, 29, 31, 33
Sec. 2591	6, 7, 27, 34
Sec. 2593	7, 27, 36
Sec. 2596	6, 36
Sec. 3230	5, 28, 36
Sec. 3231	6, 38
Sec. 3234	6, 27, 38
Sec. 3235	40
Sec. 3311	29, 40
Sec. 3312	29, 40
Marihuana Tax Act of 1937, 50 Stat. 551	5
National Firearms Act, 48 Stat. 1236, Sec. 2	14
National Prohibition Act, 41 Stat. 305, Sec. 35	25
Revenue Act of 1928, 45 Stat. 791:	
Sec. 104	27
Sec. 293(b)	26
Sec. 412	19

Miscellaneous:

Annual Reports of the Commissioner of Internal Revenue:	
Fiscal year ended June 30, 1949, pp. 98-99	31
Fiscal year ended June 30, 1948, pp. 92-93	31
Fiscal year ended June 30, 1947, pp. 86-87	31
H. Rep. 792, 75th Cong., 1st Sess., p. 1	1, 8, 13
S. Rep. 900, 75th Cong., 1st Sess., p. 3	7, 8, 13
Story, *Commentaries on the Constitution*, 5th Ed., Vol. 1:	
Sec. 965	21
Sec. 973	22

In the Supreme Court of the United States

OCTOBER TERM, 1950

No. 81

THE UNITED STATES OF AMERICA, APPELLANT

v.

MRS. MARIA MELFTONA SANCHEZ AND ARMAND MOTA

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ILLINOIS

BRIEF FOR THE UNITED STATES

OPINION BELOW

The district court rendered no opinion on granting the judgment appealed from. The colloquy between court and counsel which preceded the entry of judgment appears at R. 4-6.

JURISDICTION

The judgment of the district court was entered on March 28, 1950. (R. 3.) The petition for appeal was presented to Mr. Justice Minton and allowed by him on April 27, 1950. (R. 7-8.) The

jurisdiction of this Court to review the case by direct appeal is conferred by 28 U.S.C. 1252. Probable jurisdiction was noted on June 5, 1950. (R. 12.)

QUESTION PRESENTED

Section 2590 (a) of the Internal Revenue Code imposes an excise tax upon transfers of marihuana. Subsection (1) provides that transfers to "special taxpayers", who have registered and paid a special occupational tax under other sections of the law, shall be taxed at the rate of $1 per ounce or fraction thereof. Subsection (2) levies a tax of $100 per ounce or fraction thereof upon transfers to all other persons.

The sole question presented is whether the tax imposed by subsection (2) is constitutional.

STATUTE INVOLVED

The pertinent statutory provisions are set out in the Appendix, pp. 33-41.

STATEMENT

On February 21, 1949, the United States brought this suit in the District Court for the Northern District of Illinois to collect taxes of $8,701.65, assessed against appellees on February 27, 1943, under Section 2590 (a)(2) of the Internal Revenue Code, upon transfers of marihuana made by them. (R. 1.) Appellees' answers denied on various grounds that they were liable for such taxes. (R. 2-3.) At the opening of the trial on March 28, 1950, appellees, relying on *Tovar* v. *Jarecki*, 173 F. 2d 449, in

which the Court of Appeals for the Seventh Circuit had held Section 2590 (a)(2) to be "a penal and not a revenue-raising statute * * * a penalty inflicted without a hearing and not a tax", moved to dismiss the complaint (R. 6). The district court, apparently regarding the *Tovar* case as an authoritative holding that Section 2590 (a)(2) is unconstitutional, granted the motion (R. 6), and an order was entered dismissing the complaint. (R. 3.)

SPECIFICATION OF ERRORS TO BE URGED

The district court erred:

1. In holding that Section 2590 (a)(2) of the Internal Revenue Code is unconstitutional.

2. In dismissing the complaint on the ground that Section 2590 (a) (2) of the Internal Revenue Code is unconstitutional.

SUMMARY OF ARGUMENT

The district court erred in dismissing the complaint on the ground that Section 2590 (a)(2) is unconstitutional. Although the court delivered no opinion, its ruling was apparently based on the ground that the tax imposed by that provision is invalid as a penalty. As the legislative history shows, Congress plainly intended the marihuana tax provisions, including that involved here, to serve a dual purpose: to raise revenue, and to discourage illicit use of the drug. But the latter is, constitutionally, an irrelevant circumstance. The decisions of this Court, extending from the early

days of the Republic to the present, establish that an otherwise valid tax is not rendered invalid because Congress was motivated by non-fiscal considerations in laying the tax. Nor is a tax open to attack on the ground that it has a regulatory or deterrent effect upon the activities taxed. It has been held in a host of cases that if a statute is on its face a lawful exercise of the taxing power, the courts will go no further in seeking, by collateral inquiry into the motives of Congress or the impact of the tax on the activities affected, to ascribe to Congress an attempt, under the guise of taxation, to exercise another power denied by the Constitution. Familiar examples are the cases sustaining the firearms, oleomargarine, and narcotics taxes.

Cases like the *Child Labor Tax Case*, 259 U. S. 20, and *United States* v. *Butler*, 297 U. S. 1, would appear to be out of harmony with these basic doctrines, which were established more than a century ago and have been reiterated as recently as *Sonzinsky* v. *United States*, 300 U. S. 506, and *Fernandez* v. *Wiener*, 326 U. S. 340. Whatever their present vitality, however, the former cases are distinguishable and have no bearing here. The statute involved here is on its face clearly a tax measure. This is not a case "where the statute contains regulatory provisions related to a purported tax in such a way as has enabled this Court to say in other cases that the latter is a penalty resorted to as a means of enforcing the regulations." *Sonzinsky*, *supra*, at 513. The regulatory features of the marihuana tax

provisions are clearly supportable as in aid of the revenue. Nor is the tax here conditioned upon a showing that the activities taxed are criminal or unlawful. Consequently, the rationale of cases like *United States* v. *Constantine*, 296 U. S. 287, and *Lipke* v. *Lederer*, 259 U. S. 557, has no application here. It is of no constitutional significance that a tax may have the same effect on the activities taxed as an outright statutory prohibition. This Court has made it clear beyond doubt that an otherwise valid tax is not to be annulled because it is penal in nature.

ARGUMENT

Section 2590 (a)(2) of the Internal Revenue Code Is Constitutional

1. *The statute.*

The only question presented on this appeal is whether the tax imposed by subsection (2) of Section 2590 (a) of the Internal Revenue Code is constitutional. That provision is part of a comprehensive statutory scheme established by Congress for the taxation of marihuana. Originally contained in the Marihuana Tax Act of 1937, 50 Stat. 551, these provisions now appear in the Internal Revenue Code (53 Stat., Part I, 26 U. S. C. 1946 ed.), Sections 2590 to 2604, and 3230 to 3239, inclusive.

Briefly, the marihuana tax provisions may be summarized as follows: Section 3230 requires all legitimate handlers of marihuana (manufacturers, importers, doctors, pharmacists, etc.) to pay a special occupational tax ranging from $1 to $24 an-

nually. Section 3231 requires such persons to register with the collector of internal revenue. Section 2591 makes it unlawful for any person, whether or not required to pay the special occupational tax, to transfer marihuana except in pursuance of a written order of the transferee, on an official form prescribed by the Secretary of the Treasury. Section 2591 (b) excepts certain kinds of transfers (e.g., to a patient by a physician or dentist in the course of professional treatment) from this order-form requirement.

Section 2590 (a) imposes an excise tax upon all transfers of marihuana required by Section 2591 to be carried out pursuant to written order forms. Subsection (1) levies a tax of $1 per ounce or fraction thereof on transfers to "special-taxpayers", who have paid the special occupational tax and registered under Sections 3230 and 3231. Subsection (2), the validity of which is here involved, taxes transfers to all other persons at the rate of $100 per ounce or fraction thereof. Section 2590 (b) provides that the transfer tax shall be paid by the transferee, but that if the transfer is made in violation of Section 2591 without an order form and without payment of the transfer tax, the transferor shall also be liable for such tax. Criminal penalties are provided in Sections 2596 and 3235 for manufacturing, producing, or dealing in marihuana without registering and paying the special occupational tax (Sec. 3234 (a)), for trans-

ferring marihuana without an official order form (Sec. 2591 (a)); and for acquiring marihuana without payment of the transfer tax (Sec. 2593).

As the committee reports state, Congress, in enacting the Marihuana Tax Act of 1937, had a dual purpose: "to employ the Federal taxing power to raise revenue from the marihuana drug traffic and to discourage the widespread use of the drug by smokers and drug addicts." H. Rep. No. 792, 75th Cong., 1st Sess., p. 1; S. Rep. No. 900, 75th Cong., 1st Sess., p. 3. Marihuana, the Senate Committee on Finance found, is a "dangerous drug" derived from the hemp plant, which, in addition to its proper medicinal and industrial uses, "is also used illicitly by smoking it in crudely prepared cigarettes, which are readily procurable in almsot all parts of the country at prices ranging from 10 to 25 cents each. Under the influence of this drug the will is destroyed and all power of directing and controlling thought is lost. Inhibitions are released. As a result of these effects, many violent crimes have been and are being committed by persons under the influence of this drug. Not only is marihuana used by hardened criminals to steel them to commit violent crimes, but it is also being placed in the hands of high-school children in the form of marihuana cigarettes by unscrupulous peddlers. Its continued use results many times in impotency and insanity.

"Two objectives have dictated the form of H.R. 6906: First, the development of a plan of taxation

which will raise revenue and at the same time render extremely difficult the acquisition of marihuana by persons who desire it for illicit uses and, second, the development of an adequate means of publicizing dealings in marihuana in order to tax and control the traffic effectively.

"This bill is modeled upon both the Harrison Narcotic Act and the National Firearms Act, which were designed to accomplish these same general objectives with respect to opium and cocoa leaves, and firearms, respectively." S. Rep. No. 900, *supra*, pp. 2-3. To substantially the same effect, see H. Rep. No. 792, *supra*, pp. 1-2.

2. *The grounds for the decision below.*

The district court granted appellees' motion to dismiss without delivering any opinion, oral or written. However, the grounds upon which Judge Barnes acted plainly appear from the colloquy between court and counsel which preceded entry of the order dismissing the complaint. (R. 4-6.) At the opening of the trial, Government counsel recalled to the court's attention the recent case of *Tovar* v. *Jarecki* in which the plaintiff had sought to enjoin the collector of internal revenue from collecting a transfer tax on marihuana, assessed pursuant to Section 2590 (a)(2). In that case Judge Barnes had dismissed the complaint. On appeal, however, the Court of Appeals for the Seventh Circuit reversed, holding that the section is "a penal

statute and not a tax statute" and hence that a court of equity could enjoin the collection of such a penalty, notwithstanding Section 3653 of the Internal Revenue Code, which prohibits suits to restrain the collection of taxes. (173 F. 2d 449, 451.)

Government counsel then stated, "on the assumption that your Honor will doubtless follow the Circuit Court of Appeals decision to the effect that this tax is a penalty, and unconstitutional", that he desired to make a prima facie case by putting in the assessment list and other evidence, so that if the Government should prevail on appeal, a remand might not be necessary. (R. 5.) After a brief discussion between court and counsel as to the reasons for the Government's failure to seek certiorari in the *Tovar* case, appellees' counsel made a formal motion to dismiss on the authority of that case. This motion was granted forthwith (R. 6), and an order to that effect was entered the same day (R. 3).

Clearly, therefore, even though the *Tovar* decision, strictly speaking, did not squarely adjudicate Section 2590 (a)(2) to be unconstitutional but only held it to be a penalty for purposes of Section 3653, the dismissal of the complaint in the present case was based on Judge Barnes's conclusion (to which he was led, it must be admitted, by the statements of Government counsel) that the *Tovar* case represented an authoritative precedent, binding upon him, that Section 2590 (a)(2) is unconstitutional

as imposing a penalty and not a tax. The reasoning of the Court of Appeals in the *Tovar* case is indicated by the following observations concerning the nature of the tax imposed by that section (173 F. 2d at 451):

> We think it quite plain that this statute is a penal and not a revenue-raising statute. If this plaintiff had been a licensed transferee, he would have had to pay a tax of $1 per ounce plus the charges for obtaining the license which taken together make a sizable amount and certainly would discourage the lawful use of this weed. But since the plaintiff was an unlicensed transferee, as claimed, he must pay $100 an ounce as a so-called tax. Does anyone suppose that the Government is trying to raise revenue in either instance? Is it not perfectly plain that what the Government is trying to do is to take this plaintiff's property and turn him and his family out on the street for not having a license to do something the Government did not want him to do? This the Government claims the right to do without notice or hearing and by means of its tax techniques when it could not convict for the same offense by a fair trial in a criminal proceeding.
>
> We hold that this section of the statute under which this plaintiff was assessed is a penal statute and not a tax statute. * * *

3. *The controlling principles established by decisions of this Court.*

First, some general considerations. The authority of Congress to levy taxes is found in Arti-

cle I, Section 8, clause 1 of the Constitution, which provides:

> The Congress shall have Power To lay and collect Taxes, Duties, Imposts and Excises, to pay the Debts and provide for the common Defence and general Welfare of the United States; * * *

The authority so conferred upon Congress "is exhaustive and embraces every conceivable power of taxation." *Brushaber* v. *Union Pac. R. R.*, 240 U. S. 1, 12. Early in its history this Court said that the taxing power of Congress is subject only to the three limitations explicitly contained in the Constitution: that Congress cannot tax exports (Art. I, Sec. 9); that indirect taxes must be uniform (Art. I, Sec. 8); and that direct taxes shall be apportioned (Art. I, Sec. 9). "With these exceptions, the exercise of the [taxing] power is, in all respects, unfettered." *Pacific Ins. Co.* v. *Soule*, 7 Wall. 433, 446. In that case the Court stated (p. 443):

> Where the power of taxation, exercised by Congress, is warranted by the Constitution, as to mode and subject, it is, necessarily, unlimited in its nature. Congress may prescribe the basis, fix the rates, and require payment as it may deem proper. Within the limits of the Constitution it is supreme in its action. No power of supervision or control is lodged in either of the other departments of the government.

Similarly, in the *License Tax Cases*, 5 Wall. 462, 471, Mr. Chief Justice Chase, speaking for the Court said:

> It is true that the power of Congress to tax is a very extensive power. It is given in the Constitution, with only one exception and only two qualifications. Congress cannot tax exports, and it must impose direct taxes by the rule of apportionment, and indirect taxes by the rule of uniformity. Thus limited, and thus only, it reaches every subject, and may be exercised at discretion.

In *Austin* v. *The Aldermen*, 7 Wall. 694, 699, this general principle was reiterated in broad terms:

> The right of taxation, where it exists, is necessarily unlimited in its nature. It carries with it inherently the power to embarrass and destroy.

Similar expressions are to be found in numerous cases. *E.g.*, *Veazie Bank* v. *Fenno*, 8 Wall. 533, 548 ("The power to tax may be exercised oppressively upon persons, but the responsibility of the legislature is not to the courts, but to the people by whom its members are elected."); *Patton* v. *Brady, Executrix*, 184 U. S. 608, 623 ("* * * it is no part of the function of a court to inquire into the reasonableness of the excise either as respects the amount, or the property upon which it is imposed"); *Spencer* v. *Merchant*, 125 U. S. 345, 355; *Knowlton* v. *Moore*, 178 U. S. 41, 60; *Treat* v. *White*, 181 U. S. 264, 269; *Flint* v. *Stone Tracy Co.*,

220 U. S. 107, 158. Reviewing the earlier precedents, the Court's opinion in *McCray* v. *United States*, 195 U. S. 27, 59, summarized the basic constitutional principle as follows:

> Since, as pointed out in all the decisions referred to, the taxing power conferred by the Constitution knows no limits except those expressly stated in that instrument, it must follow, if a tax be within the lawful power, the exertion of that power may not be judicially restrained because of the results to arise from its exercise.

The general doctrine established in the above cases has been given specific application by the Court in its frequent rejection of the contention, again renewed in the present case, that a tax is unconstitutional because Congress was motivated by some non-fiscal considerations in levying the tax, or because it has a regulatory or deterrent effect upon the activities taxed. The Court has recognized that, in a sense, every excise is a regulation. "Any tax is a discouragement and therefore a regulation so far as it goes." *Pacific Fisheries* v. *Alaska*, 269 U. S. 269, 277. It may be admitted, as the legislative history reviewed above, pp. 7-8, makes clear, that, in addition to raising revenue, a purpose of Congress in enacting the Marihuana Tax Act of 1937 was "to discourage the widespread use of the drug by smokers and drug addicts." H. Rep. No. 792, 75th Cong., 1st Sess., p. 1; S. Rep. No. 900, 75th Cong., 1st Sess., p.

3. But it is now too settled for argument that such a regulatory purpose, or effect, of a tax does not render it invalid. The cases declaring and applying this principle are legion. The closest on its facts is probably *Sonzinsky* v. *United States*, 300 U. S. 506, involving the validity of Section 2 of the National Firearms Act, 48 Stat. 1236, which imposed a $200 annual license tax on dealers in firearms. Another section of the Act levied a tax of $200 on each transfer of a firearm, payable by the transferor. Like appellees here, Sonzinsky argued that the license tax was "not a true tax, but a penalty imposed for the purpose of suppressing traffic in a certain noxious type of firearms, the local regulation of which is reserved to the states because not granted to the national government"; and that "the cumulative effect on the distribution of a limited class of firearms, of relatively small value, by the successive imposition of different taxes" is to show the statute "to be prohibitive in effect and to disclose unmistakably the legislative purpose to regulate rather than to tax." (300 U. S. at 512-513.)

The Court flatly rejected this contention (pp. 513-514):

> * * * On its face it [the statute] is only a taxing measure, and we are asked to say that the tax, by virtue of its deterrent effect on the activities taxed, operates as a regulation which is beyond the congressional power.
>
> Every tax is in some measure regulatory.

> To some extent it interposes an economic impediment to the activity taxed as compared with others not taxed. But a tax is not any the less a tax because it has a regulatory effect, [citations]; and it has long been established that an Act of Congress which on its face purports to be an exercise of the taxing power is not any the less so because the tax is burdensome or tends to restrict or suppress the thing taxed. [citations]
>
> Inquiry into the hidden motives which may move Congress to exercise a power constitutionally conferred upon it is beyond the competency of courts. [citations] They will not undertake, by collateral inquiry as to the measure of the regulatory effect of a tax, to ascribe to Congress an attempt, under the guise of taxation, to exercise another power denied by the Federal Constitution. [citations]

Another familiar application of these principles is to be found in the oleomargarine tax cases. In *McCray* v. *United States*, 195 U. S. 27, the Court had before it a federal tax of one quarter of a cent per pound on uncolored oleomargarine, and ten cents per pound if colored to resemble butter. It was obvious that reasons other than fiscal necessities had induced Congress to fix the rate forty times higher in the case of colored oleomargarine. The tax was nevertheless sustained as a proper excise. The fact that the measure was on its face a tax statute was considered sufficient to preclude any inquiry into whether Congress acted for non-

fiscal motives. Mr. Justice White wrote for the Court (pp. 56, 59):

> The decisions of this court from the beginning lend no support whatever to the assumption that the judiciary may restrain the exercise of lawful power on the assumption that a wrongful purpose or motive has caused the power to be exerted. * * *
>
> * * * * *
>
> It being thus demonstrated that the motive or purpose of Congress in adopting the acts in question may not be inquired into, we are brought to consider the contentions relied upon to show that the acts assailed were beyond the power of Congress, putting entirely out of view all considerations based upon purpose or motive.
>
> Undoubtedly, in determining whether a particular act is within a granted power, its scope and effect are to be considered. Applying this rule to the acts assailed, it is self-evident that on their face they levy an excise tax. That being their necessary scope and operation, it follows that the acts are within the grant of power.

Similarly, *Magnano Co.* v. *Hamilton*, 292 U. S. 40, upheld a statute of the State of Washington laying a special excise tax on oleomargarine and other butter substitutes. Citing *Brushaber* v. *Union Pac. R. R.*, 240 U. S. 1, 24, Mr. Justice Sutherland's opinion for a unanimous Court stated (p. 44): "Except in rare and special instances, the due process of law clause contained in the Fifth

Amendment is not a limitation upon the taxing power conferred upon Congress by the Constitution." (Accord: *Alaska Fish Co.* v. *Smith*, 255 U. S. 44, 48-49; *McCray* v. *United States*, 195 U. S. 27, 63.) The opinion continued: "Collateral purposes or motives of a legislature in levying a tax of a kind within the reach of its lawful power are matters beyond the scope of judicial inquiry." (*Id.*) See also *In re Kollock, Petitioner*, 165 U. S. 526.

The same principle has been applied to sustain the validity of the Federal Anti-Narcotic Act (38 Stat. 785). *United States* v. *Doremus*, 249 U. S. 86, and *Nigro* v. *United States*, 276 U. S. 332. The question in those cases was the validity of the order-form requirements of the Act. In sustaining those requirements as appropriate regulatory adjuncts in a revenue measure, the Court treated as not open to question the validity of Section 1 of the Act, which imposed an occupation tax on handlers of certain narcotics, required that they register, and imposed a stamp tax on sales of such drugs. It was not the validity of that section, but only of succeeding sections which was challenged in the *Doremus* and *Nigro* cases. These latter provisions were upheld as proper administrative regulations in aid of the basic tax. In *Doremus* the Court frankly recognized that the statute had "a moral end as well as revenue in view." (249 U. S. at 94.) But this fact was deemed irrelevant to its constitutionality (pp. 93-94):

> And from an early day the court has held that the fact that other motives may impel the exercise of federal taxing power does not authorize the courts to inquire into that subject. If the legislation enacted has some reasonable relation to the exercise of the taxing authority conferred by the Constitution, it cannot be invalidated because of the supposed motives which induced it. * * *
>
> The act may not be declared unconstitutional because its effect may be to accomplish another purpose as well as the raising of revenue.

See also *Alston* v. *United States*, 274 U. S. 289, sustaining the validity of the stamp tax imposed by Section 1 of the Anti-Narcotic Act.

Numerous additional authorities may be cited to support the proposition that a tax is not rendered invalid because, in addition to raising revenue, it is intended to further a social or economic policy deemed desirable by Congress. In *Billings* v. *United States*, 232 U. S. 261, the Court sustained a tax upon the use of foreign-built yachts, although domestic yachts were not subject to tax. The obvious intent to foster domestic shipbuilding did not invalidate the statute. A similar motive to protect American producers and manufacturers against the competition of foreigners was revealed on the face of the protective tariff act sustained in *Hampton & Co.* v. *United States*, 276 U. S. 394. In rejecting the contention that the power of Congress in levying custom duties might be exercised only

for revenue purposes, the Court said (pp. 412-413):

> So long as the motive of Congress and the effect of its legislative action are to secure revenue for the benefit of the general government, the existence of other motives in the selection of the subjects of taxes can not invalidate Congressional action. * * *
>
> * * * the fact that Congress declares that one of its motives in fixing the rates of duty is so to fix them that they shall encourage the industries of this country in the competition with producers in other countries in the sale of goods in this country, can not invalidate a revenue act so framed. * * *

Accord: *Alaska Fish Co.* v. *Smith*, 255 U. S. 44, 48; *Crocker* v. *Malley*, 249 U. S. 223, 234.

Another illustration is furnished by Section 412 of the Revenue Act of 1928 (45 Stat. 791, 964), which imposed a tax upon theater tickets sold at places other than the ticket office at a rate of 5 per cent of the amount of the premium, where such premium was 75 cents or less, and at the rate of 50 percent of the entire amount of the premium, where it exceeded 75 cents. The obvious purpose and effect of the tax was to discourage so-called ticket scalpers from charging a premium of more than 75 cents. The statute was sustained in *McKenna* v. *Anderson*, 31 F. 2d 1016 (C.A. 2), and this Court denied certiorari, 279 U. S. 869. See also *Alexander Theater Ticket Office* v. *United States*, 23 F.

2d 44 (C.A. 2); *Apollo Operating Corporation* v. *Anderson*, 55 F. 2d 66 (C.A. 2).

Succinctly put, all of these cases exemplify the principle stated in *Fernandez* v. *Wiener*, 326 U.S. 340, 362, as follows:

> Undoubtedly every tax which lays its burden on some and not others may have an incidental regulatory effect. But since that is an inseparable concomitant of the power to tax, the incidental regulatory effect of the tax is embraced within the power to lay it. It has long been settled that an Act of Congress which on its face purports to be an exercise of the taxing power, is not any the less so because the tax is burdensome or tends to restrict or suppress the thing taxed. In such a case it is not within the province of courts to inquire into the unexpressed purposes or motives which may have moved Congress to exercise a power constitutionally conferred upon it.

It is obvious that almost every tax is designed to further some economic, social or moral policy of the legislature, in addition to the general purpose of producing revenue. Thus, the allowance of deductions for charitable contributions reflects a legislative purpose of encouraging taxpayers to make such gifts. The imposition, in wartime and similar periods, of prohibitively high excise taxes upon luxuries is manifestly intended to limit the manufacture and use of such products. The high tax on undistributed corporate profits is primarily de-

signed to force corporations to distribute earnings. Similarly, the comparatively heavy taxes on alcoholic beverages and tobacco undoubtedly reflect a legislative judgment as to the social or moral value of such products. Yet, so long as the legislative policy is embodied in the form of a tax, it is constitutional; and the circumstance that the tax has a collateral non-fiscal purpose or effect has no bearing on its validity. As this Court said in *Magnano Co.* v. *Hamilton*, 292 U. S. 40, 47:

> From the beginning of our government, the courts have sustained taxes although imposed with the collateral intent of effecting ulterior ends, which, considered apart, were beyond the constitutional power of the lawmakers to realize by legislation directly addressed to their accomplishment. * * *

It would be a pernicious doctrine, indeed one practically impossible of application, if the contrary had been held. Perhaps the classic statement of the controlling principle is made by Mr. Justice Story in his *Commentaries on the Constitution*, 5th Ed., Vol. 1, Sec. 965:

> The absolute power to lay taxes includes the power in every form in which it may be used, and for every purpose to which the legislature may choose to apply it. This results from the very nature of such an unrestricted power. *A fortiori* it might be applied by Congress to purposes for which nations have been accustomed to apply it. Now, nothing is more clear,

> from the history of commercial nations, than the fact that the taxing power is, often, very often, applied for other purposes than revenue. It is often applied as a regulation of commerce. It is often applied as a virtual prohibition upon the importation of particular articles for the encouragement and protection of domestic products and industry; for the support of agriculture, commerce, and manufactures; for retaliation upon foreign monopolies and injurious restrictions; for mere purposes of state policy and domestic economy; sometimes to banish a noxious article of consumption; sometimes as a bounty upon an infant manufacture or agricultural product; sometimes as a temporary restraint of trade; sometimes as a suppression of particular employments; sometimes as a prerogative power to destroy competition and secure a monopoly to the government!

See also *id.*, Sec. 973:

> So that, whichever construction of the power to lay taxes is adopted, the same conclusion is sustained, that the power to lay taxes is not by the Constitution confined to purposes of revenue. In point of fact, it has never been limited to such purposes by Congress; and all the great functionaries of the government have constantly maintained the doctrine that it was not constitutionally so limited.

In addition to the cases already cited, see *Steward Machine Co.* v. *Davis*, 301 U. S. 548, 585-598; *Alaska Fish Co.* v. *Smith*, 255 U. S. 44, 48; *Helvering* v.

Mitchell, 303 U. S. 391, 398-405; and *Helvering v. Nat. Grocery Co.*, 304 U. S. 282, 288-289.

The cases that appellees may rely upon in contending that the tax levied by Section 2590 (a)(2) is unconstitutional as a penalty fall into two categories. The first is exemplified by the *Child Labor Tax Case*, 259 U. S. 20. In that case it was held that the statute showed *on its face* that it was not a revenue measure, and that the tax was a penalty for wilful failure to comply with a comprehensive and detailed scheme of federal regulation of child labor deemed beyond the powers of Congress. The statute exempted from tax employers who did not know that the persons employed by them were under the prescribed age. The rationale of that case was thus stated in *Nigro v. United States*, 276 U. S. 332, 353:

> * * * Congress by merely calling an Act a taxing act can not make it a legitimate exercise of taxing power under Section 8 of Article I of the Federal Constitution, if in fact the words of the act show clearly its real purpose is otherwise.

Similarly, in *Carter v. Carter Coal Co.*, 298 U. S. 238, no attempt was made to support the Act as a revenue measure. Its validity rested admittedly upon its status as an effort to regulate interstate commerce and matters affecting interstate commerce in bituminous coal. The tax on its face was a means of securing adherence to a code of regu-

lations which themselves carried penalties enforceable by the Federal Government. In the same category is *Hill* v. *Wallace*, 259 U. S. 44.

In *United States* v. *Butler*, 297 U. S. 1, the validity of the tax as such was not involved. The question was the validity of the use of the funds derived from the tax. Since the Court held that the funds were used to coerce or purchase compliance with an invalid scheme of regulation, and since the tax was held to be an integral part of the Act, the tax fell.

It is doubtful whether these last-cited cases are in harmony with the basic constitutional doctrine limiting the extent to which courts will scrutinize revenue measures in order to ascertain whether Congress was motivated by non-fiscal considerations in laying the tax. In any event, whatever their present vitality, these cases are distinguishable and have no application here. Like *Sonzinsky* v. *United States*, 300 U. S. 506, 513, this case "is not one where the statute contains regulatory provisions related to a purported tax in such a way as has enabled this Court to say in other cases that the latter is a penalty resorted to as a means of enforcing the regulations." The statute involved here is on its face clearly a tax measure. The registration and order-form provisions, like those upheld in the National Firearms Act and the Anti-Narcotic Act, are "obviously supportable as in aid of a revenue purpose". *Sonzinsky* v. *United States*, *supra*, at 513; *United States* v. *Doremus*,

249 U. S. 86, 94; *Nigro* v. *United States*, 276 U. S. 332, 353-354.

The second group of cases on which appellees may rely is represented by *Lipke* v. *Lederer*, 259 U. S. 557, and *United States* v. *Constantine*, 296 U. S. 287. Cf. *Regal Drug Co.* v. *Wardell*, 260 U. S. 386; *United States* v. *LaFranca*, 282 U. S. 568. However, those cases are distinguishable because the subject of the tax there held invalid as a penalty was described or treated as criminal by the taxing statute. In those cases the tax was found to be in the nature of an additional punishment for the act made criminal by the statute. Section 35 of the National Prohibition Act (41 Stat. 305), involved in *Lipke* v. *Lederer*, *supra*, assessed a tax in double the amount otherwise provided by law, together with "an additional penalty" of $500 on retail dealers and $1,000 on manufacturers, upon persons illegally manufacturing or selling liquor in violation of section 29 of the Act. The Court's opinion pointed out (p. 562): "Evidence of crime (§ 29) is essential to assessment under § 35. It lacks all the ordinary characteristics of a tax, whose primary function 'is to provide for the support of the government' and clearly involves the idea of punishment for infraction of the law—the definite function of a penalty." Similarly, the tax invalidated in *United States* v. *Constantine*, *supra*, was one where the "condition of the imposition is the commission of a crime", which the Court

held to be "a penalty for the violation of state law, and as such beyond the limits of federal power." (296 U. S. at 294-295.)

The rationale of the *Lipke* and *Constantine* cases would appear to have been substantially undermined by subsequent decisions of this Court. Thus, in *Helvering* v. *Mitchell*, 303 U. S. 391, the question was whether Section 293 (b) of the Revenue Act of 1928 (45 Stat. 791), imposing an additional 50 per cent tax where there was fraud with intent to evade the income tax, was unconstitutional as a criminal penalty in violation of the double jeopardy clause. In upholding the provision as a legitimate exercise of the taxing power, the Court pointed out that Congress could impose both a criminal and a civil sanction in respect to the same act or omission. The Court held that sanctions imposing additions to a tax are of a "remedial character" because they "are provided primarily as a safeguard for the protection of the revenue and to reimburse the Government for the heavy expense of investigation and the loss resulting from the taxpayer's fraud." (303 U. S. at 401.) The fact that Congress provided a "distinctly civil procedure" (i.e., collection by distraint as well as by judicial proceedings in court), the Court stated (p. 402), "indicates clearly that it intended a civil, not a criminal, sanction. Civil procedure is incompatible with the accepted rules and constitutional guaranties governing the trial of criminal prosecutions, and where civil procedure is prescribed for

the enforcement of remedial sanctions, those rules and guarantees do not apply."

Similarly, in *Helvering* v. *National Grocery Co.*, 304 U. S. 282, it was contended that Section 104 of the Revenue Act of 1928 (45 Stat. 814) providing a 50 per cent additional tax on corporations accumulating earnings in excess of reasonable business needs, was unconstitutional "because the liability imposed is not a tax upon income, but a penalty designed to force corporations to distribute earnings" (p. 288). Citing the *Mitchell* case, the Court summarily rejected this contention: "The penal nature of the imposition does not prevent its being valid, as the tax was otherwise permissible under the Constitution." (304 U. S. at 288-289.)

In the present case, the tax laid by Section 2590(a)(2) is not conditioned upon commission of a crime. The tax is upon the transfer of marihuana to a person who has not paid the special tax and registered under Section 3230 and 3231. Such a transfer is not made a crime by the statute, nor is the tax conditioned upon its being shown that the transfer is made criminal or unlawful by other provisions of law. The only transfers made unlawful by the Act are (1) a transfer not in pursuance of an official order form (Sec. 2591); and (2) a transfer *by* a person who has not paid the special tax and registered (Sec. 3234). Acquisition of the drug by any person without having paid the transfer tax is also unlawful (Sec. 2593). It is thus the failure to pay the tax, either the special or trans-

fer tax, or the acquisition of the drug without a proper order form, which gives rise to criminal liability, and not, as in the *Lipke* and *Constantine* cases, the criminal liability which gives rise to the tax.

It is a constitutional irrelevance, therefore, that the $100 per ounce tax levied by Section 2590 (a)(2) may have a prohibitory effect upon transfers of marihuana to unregistered persons. If Congress can prohibit the transfer of drugs to other than legitimate handlers, as it in effect did under the Anti-Narcotic Act upheld in *Nigro v. United States*, 276 U.S. 332, it cannot be an objection to a tax that its effect may be the same as an outright statutory prohibition. If otherwise valid under the Constitution, a tax does not become bad because it is penal in nature. The taxing power clearly permits the imposition of penalties, civil as well as criminal, in aid of collection of revenue. If it had seen fit to do so, Congress could have imposed an absolute prohibition, enforceable by criminal penalties, upon transfers of marihuana to unregistered persons. Such a provision would have been clearly constitutional as ancillary to enforcement of the special occupational tax under Section 3230 and the $1 per ounce transfer tax under Section 2590 (a)(1). That Congress chose instead to impose a $100 per ounce tax, which would not only accomplish the same result but also provide an additional source of revenue, does not alter the essential validity of its action as an exercise of the taxing power.

Moreover, it should be pointed out in the present case that, like the tax sustained as a civil sanction in the *Mitchell* case, the tax here is collectible by a distinctly civil procedure. The tax is paid by affixing appropriate stamps to the order form (sec. 2590 (c)); and the Commissioner makes assessments for unpaid taxes (sec. 3311), which may be collected by distraint or court proceedings (sec. 3312 (d)).

The civil character of the tax imposed by subsection (2) of Section 2590 (a) is not defeated by the fact that its amount is very high in relation to that imposed by subsection (1). The cases previously cited (pp. 11-20) make it clear that a tax laid upon a proper subject of taxation is not to be condemned because of its amount. In any event, Congress was fully justified in fixing a higher tax upon transfers of marihuana to persons who had not registered under the law and paid the special occupational tax. It is obviously unlikely that such persons will voluntarily report the transfer to the collector and pay the tax due. The higher rate of tax, as in the *Mitchell* case (*supra*, at p. 401), was provided "primarily as a safeguard for the protection of the revenue and to reimburse the Government for the heavy expense of investigation and the loss resulting from the taxpayer's fraud."[1] The reasons for levying a

[1] Indeed, a tax which is merely nominal in amount might possibly be more vulnerable. See *Nigro* v. *United States*, 276 U.S. 332, 346-347, 353.

higher tax upon transfers to a class of taxpayers such as are involved here were fully and cogently set forth in Mr. Justice Cardozo's dissenting opinion, joined by Mr. Justice Brandeis and Mr. Justice Stone, in *United States* v. *Constantine*, 296 U. S. 287, 297-298:

> Congress may reasonably have believed that, in view of the attendant risks, a business carried on illegally and furtively is likely to yield larger profits than one transacted openly by law-abiding men. Not repression, but payment commensurate with the gains is thus the animating motive. * * * Congress may also have believed that the furtive character of the business would increase the difficulty and expense of the process of tax collection. The Treasury should have reimbursement for this drain on its resources. Apart from either of these beliefs, Congress may have held the view that an excise should be so distributed as to work a minimum of hardship; that an illegal and furtive business, irrespective of the wrongdoing of its proprietor, is a breeder of crimes and a refuge of criminals; and that in any wisely ordered polity, in any sound system of taxation, men engaged in such a calling will be made to contribute more heavily to the necessities of the Treasury than men engaged in a calling that is beneficent and lawful.
>
> Thus viewed, the statute was not adopted to supplement or sanction the police powers of the states or of their political subdivisions. It was adopted, for anything disclosed upon

> its face or otherwise, as an appropriate instrument of the fiscal policy of the nation. The business of trading in things contraband is not the same as the business of trading in legitimate articles of commerce. Classification by Congress according to the nature of the calling affected by a tax (*State Board of Tax Commissioners* v. *Jackson*, 283 U. S. 527) does not cease to be permissible because the line of division between callings to be favored and those to be reproved corresponds with a division between innocence and criminality under the statutes of a state. * * * By classifying in such a mode Congress is not punishing for a crime against another government. It is not punishing at all. It is laying an excise upon a business conducted in a particular way with notice to the taxpayer that if he embarks upon that business he will be subjected to a special burden. What he pays, if he chooses to go on, is a tax and not a penalty.[2]

CONCLUSION

The tax imposed by Section 2590 (a)(2) is clearly constitutional, and the district court erred

---

[2] It may be relevant to note (cf. *Sonzinsky* v. *United States*, 300 U.S. 506, 514; *Nigro* v. *United States*, 276 U.S. 332, 353) that the marihuana transfer tax imposed by Section 2590 (a) has produced some revenue. In the fiscal year ending June 30, 1949, the $100 per ounce taxes under subsection (b) totalled $5,554.90, while the $1 per ounce levies under subsection (a) amounted to $823.86. See *Annual Report of the Commissioner of Internal Revenue, Fiscal Year Ended June 30, 1949*, pp. 98-99. The comparable figures for the two preceding fiscal years were $7,120.35 and $1,061.96, and $8,267.35 and $2,275.43, respectively. *Id., Fiscal Year Ended June 30, 1948*, pp. 92-93; *id., Fiscal Year Ended June 30, 1947*, pp. 86-87.

in dismissing the complaint. The judgment of the district court should be reversed, and the case remanded to that court for further proceedings.

Respectfully submitted.

PHILIP B. PERLMAN,
Solicitor General.
THERON LAMAR CAUDLE,
Assistant Attorney General.
PHILIP ELMAN,
ELLIS N. SLACK,
MELVA M. GRANEY,
Special Assistants to the Attorney General.

SEPTEMBER 1950.

APPENDIX

Internal Revenue Code (26 U. S. C. 1946 ed.):

SEC. 2590. TAX.

(a) *Rate.*—There shall be levied, collected, and paid upon all transfers of marihuana which are required by section 2591 to be carried out in pursuance of written order forms taxes at the following rates:

(1) *Transfers to special taxpayers.*—Upon each transfer to any person who has paid the special tax and registered under sections 3230 and 3231, $1 per ounce of marihuana or fraction thereof.

(2) *Transfers to others.*—Upon each transfer to any person who has not paid the special tax and registered under sections 3230 and 3231, $100 per ounce of marihuana or fraction thereof.

(b) *By Whom Paid.*—Such tax shall be paid by the transferee at the time of securing each order form and shall be in addition to the price of such form. Such transferee shall be liable for the tax imposed by this section but in the event that the transfer is made in violation of section 2591 without an order form and without payment of the transfer tax imposed by this section, the transferor shall also be liable for such tax.

(c) *How paid*—(1) Stamps.—Payment of the tax herein provided shall be represented by appropriate stamps to be provided by the Secretary.

* * * * *

SEC. 2591. ORDER FORMS.

(a) *General Requirement.*—It shall be unlawful for any person, whether or not required to pay a special tax and register under sections 3230 and 3231, to transfer marihuana, except in pursuance of a written order of the person to whom such marihuana is transferred, on a form to be issued in blank for that purpose by the Secretary.

(b) *Exceptions.*—Subject to such regulations as the Secretary may prescribe, nothing contained in this section shall apply—

(1) *Professional practice.*—To a transfer of marihuana to a patient by a physician, dentist, veterinary surgeon, or other practitioner registered under section 3231, in the course of his professional practice only: *Provided*, That such physician, dentist, veterinary surgeon, or other practitioner shall keep a record of all such marihuana transferred, showing the amount transferred and the name and address of the patient to whom such marihuana is transferred, and such record shall be kept for a period of two years from the date of the transfer of such marihuana, and subject to inspection as provided in section 2595.

(2) *Prescriptions.*—To a transfer of marihuana, made in good faith by a dealer to a consumer under and in pursuance of a written prescription issued by a physician, dentist, veterinary surgeon, or other practitioner registered under section 3231: *Pro-*

vided, That such prescription shall be dated as of the day on which signed and shall be signed by the physician, dentist, veterinary surgeon, or other practitioner who issues the same: *Provided, further*, That such dealer shall preserve such prescription for a period of two years from the day on which such prescription is filled, so as to be readily accessible for inspection by the officers, agents, employees, and officials mentioned in section 2595.

(3) *Exportation.*—To the sale, exportation, shipment, or delivery of marihuana by any person within the United States, any Territory, the District of Columbia, or any of the insular possessions of the United States, to any person in any foreign country regulating the entry of marihuana, if such sale, shipment, or delivery of marihuana is made in accordance with such regulations for importation into such foreign country as are prescribed by such foreign country, such regulations to be promulgated from time to time by the Secretary of State of the United States.

(4) *Government and State officials.*—To a transfer of marihuana to any officer or employee of the United States Government or of any State, Territorial, District, county, or municipal or insular government lawfully engaged in making purchases thereof for the various departments of the Army and Navy, the Public Health Service, and for Govern-

ment, State, Territorial, District, county, or municipal or insular hospitals or prisons.

* * * * *

SEC. 2593. UNLAWFUL POSSESSION.

(a) *Persons in General.*—It shall be unlawful for any person who is a transferee required to pay the transfer tax imposed by section 2590 (a) to acquire or otherwise obtain any marihuana without having paid such tax; and proof that any person shall have had in his possession any marihuana and shall have failed, after reasonable notice and demand by the collector, to produce the order form required by section 2591 to be retained by him, shall be presumptive evidence of guilt under this section and of liability for the tax imposed by section 2590 (a).

* * * * *

SEC. 2596. PENALTIES.

Any person who is convicted of a violation of any provision of this subchapter or Part VI of subchapter A of chapter 27 shall be fined not more than $2,000 or imprisoned not more than five years, or both, in the discretion of the court.

SEC. 3230. TAX.

(a) *Liability and time for payment of tax.*—Every person who imports, manufactures, produces, compounds, sells, deals in, dispenses, prescribes, administers, or gives away mari-

huana shall (1) before engaging in any of the above-mentioned activities, and (2) thereafter, on or before July 1 of each year, pay the following special taxes respectively:

(1) *Importers, manufacturers, and compounders.*—

Importers, manufacturers, and compounders of marihuana, $24 per year.

(2) *Producers.*

Producers of marihuana (except those included within subdivision (4) of this subsection), $1 per year, or fraction thereof, during which they engage in such activity.

(3) *Physicians, dentists, veterinary surgeons, and other practitioners.*

Physicians, dentists, veterinary surgeons, and other practitioners who distribute, dispense, give away, administer, or prescribe marihuana to patients upon whom they in the course of their professional practice are in attendance, $1 per year or fraction thereof during which they engage in any of such activities.

(4) *Persons engaged in research, instruction, or analysis.*

Any person not registered as an importer, manufacturer, producer, or compounder who obtains and uses marihuana in a laboratory for the purpose of research, instruction, or analysis, or who produces marihuana for any such purpose, $1 per year, or fraction

thereof, during which he engages in such activities.

(5) *Persons not otherwise taxed.*

Any person who is not a physician, dentist, veterinary surgeon, or other practitioner and who deals in, dispenses, or gives away marihuana, $3 per year: *Provided*, That any person who has registered and paid the special tax as an importer, manufacturer, compounder, or producer, as required by subdivisions (1) and (2) of this subsection, may deal in, dispense, or give away marihuana imported, manufactured, compounded, or produced by him without further payment of the tax imposed by this section.

* * * * * *

SEC. 3231. REGISTRATION.

(a) *In General.*—

Any person subject to the tax imposed by section 3230 shall, upon payment of such tax, register his name or style and his place or places of business with the collector of the district in which such place or places of business are located.

* * * * * *

SEC. 3234. UNLAWFUL ACTS IN CASE OF FAILURE TO REGISTER AND PAY SPECIAL TAX.

(a) *Trafficking.*—

(1) *Liability.*—It shall be unlawful for any person required to register and pay the

special tax under the provisions of sections 3230 and 3231 to import, manufacture, produce, compound, sell, deal in, dispense, distribute, prescribe, administer, or give away marihuana without having so registered and paid such tax.

(2) *Enforcement of liability.*

In any suit or proceeding to enforce the liability imposed by this section or sections 3230 and 3231, if proof is made that marihuana was at any time growing upon land under the control of the defendant, such proof shall be presumptive evidence that at such time the defendant was a producer and liable under this section as well as under Sections 3230 and 3231.

(b) *Transportation.*—

It shall be unlawful for any person who shall not have paid the special tax and registered, as required by sections 3230 and 3231, to send, ship, carry, transport, or deliver any marihuana within any Territory, the District of Columbia, or any insular possession, or from any State, Territory, the District of Columbia, any insular possession of the United States, or the Canal Zone, into any other State, Territory, the District of Columbia, or insular possession of the United States: *Provided*, That nothing contained in this section shall apply to any common carrier engaged in transporting marihuana; or to any employee of any person who shall have registered and paid the special tax as required by sections 3230 and

3231 while acting within the scope of his employment; or to any person who shall deliver marihuana which has been prescribed or dispensed by a physician, dentist, veterinary surgeon, or other practitioner registered under section 3231, who has been employed to prescribe for the particular patient receiving such marihuana; or to any United States, State, county, municipal, District, Territorial, or insular officer or official acting within the scope of his official duties.

SEC. 3235. PENALTIES.

For penalties for violating or failing to comply with any of the provisions of this part, see section 2596.

SEC. 3311. ASSESSMENT OF UNPAID TAXES PAYABLE BY STAMP.

Whenever any article upon which a tax is required to be paid by means of a stamp is sold or removed for sale by the manufacturer thereof, without the use of the proper stamp, in addition to the penalties imposed by law for such sale or removal, it shall be the duty of the Commissioner, within a period of not more than four years (except as provided in section 3312) after such removal or sale, upon such information as he can obtain, to estimate the amount of the tax which has been omitted to be paid, and to make an assessment therefor upon the manufacturer or producer of such article. He shall certify such assessment to the collector, who shall immediately demand payment of such tax, and upon the neglect or

refusal of payment by such manufacturer or producer, shall proceed to collect the same in the manner provided for the collection of other assessed taxes.

SEC. 3312. PERIOD OF LIMITATION UPON ASSESSMENT AND COLLECTION.

* * * * *

(d) *Collection after assessment.*

Where the assessment of any tax imposed by this title has been made within the statutory period of limitation properly applicable thereto, such tax may be collected by distraint or by a proceeding in court, but only if begun—

(1) Within six years after the assessment of the tax, or

(2) Prior to the expiration of any period for collection agreed upon in writing by the Commissioner and the taxpayer.

U. S. GOVERNMENT PRINTING OFFICE 1950 90371 14